Circuit Court for Baltimore County
Case No. C-03-FM-20-003738

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 654

September Term, 2024

JENNIFER MEEKS

v.

COLIN MEEKS

Graeff,
Nazarian,
Shaw,

JJ.

Opinion by Graeff, J.

Filed: December 10, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This appeal arises from an order issued by the Circuit Court for Baltimore County, which granted in part, and denied in part, the complaint filed by appellant, Jennifer Nolletti (formerly Jennifer O'Connor) ("Mother"), against appellee, Colin Meeks ("Father"), for modification of custody of the parties' minor child ("H.")[1] and child support. On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err when it held that there was no material change in circumstances regarding legal or physical custody without analyzing the required custody factors?

2. Did the circuit court abuse its discretion in reaching its ultimate conclusion on custody?

3. Did the circuit court err when it imputed income to Mother for child support purposes without making a finding of voluntary impoverishment and without analyzing any voluntary impoverishment or potential income factors?

4. Did the circuit court err when it denied Mother's request for reimbursement of certain medical expenses relating to the child?

5. Did the circuit court abuse its discretion when it denied Mother's request for attorneys' fees?

6. Did the circuit court err or abuse its discretion when it denied Mother's Motion to Alter or Amend?

For the reasons set forth below, we shall vacate the order regarding attorneys' fees and remand for further consideration. We shall otherwise affirm the judgments of the circuit court.

[1] To protect the privacy of the child, we use the child's initial.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Family Background

Mother and Father were married on June 23, 2001. They separated in September 2020. On April 15, 2021, they entered into a Marital Settlement Agreement ("MSA"). The court finalized their divorce on May 12, 2021.

The parties have two children. One child, born in March 2004, is emancipated and not involved in this appeal. The other child, H., was born in 2010. H. has special needs.

Mother testified that H. attends the Legacy School, which offers services to meet his needs. She testified that he requires additional occupational therapy and speech pathology services. H. began receiving speech and occupational therapy treatment from a provider at Three Little Birds in 2014. He began seeing another provider in 2022. H. has been treated by psychiatrist Dr. Stuart Varon since May 2016.

Mother is a full-time mother and has not worked outside the home since the birth of her oldest child. She is now remarried and earns no income. Father works as a financial planner. At the time of the parties' divorce in spring 2021, he reported a gross monthly income of $18,570.00, totaling $222,840.00 annually.

II.

Marriage Settlement Agreement and Judgment of Absolute Divorce

The parties' MSA provides that they would "have joint legal custody and joint decision-making power with each other regarding the emotional, moral, educational,

physical, and general welfare of the Children." Regarding physical custody, the MSA provides:

> The parties shall share physical custody of the minor child, [H.]. [H.] shall be with Husband every Monday and Tuesday overnight, with Wife every Wednesday and Thursday overnight, and shall alternate weekends with the parties from Friday evening through Monday morning. On any Monday and Tuesday when [H.] is distance learning, he will be with Wife during distance learning as stated in the Consent Order.

The MSA requires Father to maintain his existing or equivalent health insurance for the benefit of the Children. The "UNINSURED MEDICAL EXPENSES CHILDREN" section of the MSA provides, in pertinent part, as follows:

> 8.1 The parties shall divide by the pro rata share of their combined incomes as established by the Maryland Child Support Guidelines any necessary and reasonable medical, dental, orthodontia, eyecare and/or hospitalization expenses incurred on behalf of their Children and which are not covered or reimbursed by insurance. This obligation shall include any necessary counselling or mental health therapy expenses for either Child which are mutually agreed upon by the parties, with neither party to unreasonably withhold his or her consent. Unless it is not practicable to do so, the health care provider of services to each Child shall be a recognized and approved participant under Husband's health insurance plan. Unless Husband has provided his written consent for Wife to utilize services of a health care provider for each Child which is not a recognized and approved participant under Husband's health insurance plan, and except in the event of an emergency, Husband shall have no obligation pursuant to this Paragraph. The parties acknowledge that many of [H.]'s established medical and educational professionals (Dr. Culotta, Dr. Aron, Lisa Frank, etc.) do not accept health insurance and nothing in this provision prevents either party from continuing to use existing professionals for [H.]'s medical care and for either party to seek reimbursement from the other for the cost of using said professional by the pro rata share of their combined incomes as established by the Maryland Child Support Guidelines.
>
> 8.2 The parties shall cooperate with each other in order to provide for the prompt payment of each Child's expenses and reimbursement between the parties themselves. If one party has advanced payment of these expenses directly to the third-party provider of services, the other party's

> share of these expenses shall be paid directly to the advancing party within seven days of receipt of documentation which sets forth the total expense, the uninsured portion of the expense, and the portion of the expense which has already been paid by the advancing party. If neither party has advanced payment of these expenses, then each party shall pay his or her respective share directly to the third-party provider of services. Each party's payment shall be made immediately upon his or her respective receipt of documentation which sets forth the total expense and the uninsured portion of the expense. The terms of this Paragraph shall apply only to the payment of "extraordinary expenses" as defined by the Family Law article, as amended over time.

On May 12, 2021, the court issued a Judgment of Absolute Divorce ("JAD"). It incorporated, but did not merge, the MSA. The JAD granted Mother and Father joint legal custody of the children and physical custody as set forth in the MSA.

The court ordered, as the parties agreed, that Father pay Mother $1,450.00 per month for child support of H., noting that this was a downward deviation from the Maryland Child Support guidelines based on "the parties' total income and the costs and expenses being paid directly by each party on behalf of the minor Children." The MSA provides that Mother will deposit $450.00 each month from the child support payments into an ABLE or a 529 Account for H. [2]

[2] An ABLE account is a tax-advantaged savings program that helps people with disabilities and their families save for disability expenses. *About ABLE Accounts*, ABLE National Resource Center, https://www.ablenrc.org/what-is-able/what-are-able-acounts/ (last visited Dec. 4, 2024). A 529 Account is a tax-advantaged education savings plan. *529 Basics*, Maryland 529, https://maryland529.com/home/529-basics.html (last visited Dec. 4, 2024).

III.

Modification of Custody and Child Support

On February 3, 2022, approximately nine months after the divorce was granted, Mother filed a Complaint for Modification of Custody and Child Support. Mother alleged that there had been a material change in circumstances, which required modification of custody and child support. In support, Mother alleged that "Father withheld from Mother the fact that the Children were exposed to, and contracted, COVID-19." She alleged that Father knew that their older child was sick enough to stay home from school, but he failed to inform her of this or quarantine himself and the children. Father then dropped H. off at school for Mother to resume her access time. It was not until Mother received a call from her older child's school regarding his absences and positive COVID test that she discovered that H. was exposed**.** H. ultimately tested positive as well. Mother alleged that Father jeopardized H.'s health.

Mother also alleged that in October 2021, Trellis, where H. had been receiving weekly speech and occupational therapy since 2015, advised that it had transferred its services to Three Little Birds, which would not accept Father's insurance. Father then "unilaterally, and without consulting Mother, attempted to terminate [H.]'s Speech and Occupational therapies." H. continued to attend therapy through Three Little Birds until December 2023, but Mother paid out-of-pocket for his sessions, allegedly incurring $18,710 in fees.

Mother further alleged that, "while in the care and custody of Father, [H.] has been subjected to increased taunting," specifically, about a "man lurking in the woods coming to get him." She also alleged that Father referred to her using "derogatory and vile words . . . in front of [H.]," and Father placed notes and "provocative items," such as notes, in H.'s lunchbox and overnight bags on their custody transition days.

Mother alleged that "Father has proven that he is incapable of communicating with Mother when it comes to the Children and has even wantonly defied a court order requiring his communication with Mother." Specifically, Mother stated that the MSA required the parties "to use Our Family Wizard to communicate concerning the medical needs of [H.]," but Father refused to follow the MSA, and he had not renewed, or had canceled, his subscription to Our Family Wizard.

Mother alleged that Father was an unfit parent, and it was in the best interest of H. for custody to be modified to award her primary physical and sole legal custody of H., with reasonable visitation awarded to Father. She asserted that, "[a]s long as Mother does not have primary custody of Henry, his health and well-being are seriously at risk, and his development will suffer as a result of inconsistent routines and care providers." Mother additionally requested child support in accordance with the Child Support Guidelines, as well as the following relief: an order for Father to contribute to the medical and health care costs of the children; an order for Father to reimburse her for the expenses she had already expended; and an order for Father to pay her reasonable attorneys' fees.

Father filed an answer, denying many of the factual allegations, and stating that Mother's "histrionic language [was] an attempt to gain leverage in a case where there [was] no material change in circumstance." Father requested that the court deny the request for modification and order Mother to pay his reasonable attorneys' fees.

On May, 9, 2023, after the parties appeared for a settlement conference and reached a temporary agreement on some issues, the court issued a temporary consent order providing that all communications between the parties be exchanged exclusively through Our Family Wizard and relate solely to the children. It further ordered that H.'s bag be placed for pickup with only his personal items.

In December 2023, the court held a four-day modification hearing.

A.

Mother's Testimony

Mother testified that the parties divorced on May 12, 2021, after they had been married for almost 20 years. They entered into a MSA, which provided for joint legal and physical custody. The joint custody was on a "2-5-2-2 schedule." Mother would have H. every Wednesday and Thursday, and Father would have H. Monday and Tuesday, with the parties alternating weekends.

Mother testified that H. had been diagnosed with autism spectrum disorder, a language impairment, and a learning disability in reading, writing, and math. H. also has "anxiety and OCD tendencies as well as developmental coordination issues with dysgraphia." Due to H.'s diagnoses, he "finds challenges in almost every bit of life's

demands." In the last year and a half, Mother had noticed progress in H.'s development with the help of therapies, noting that he had friends. H. was in a homogenous environment at the Legacy School ("Legacy"), where "he has the stage to grow and be confident."[3]

Mother testified that she was actively involved in H.'s speech and occupational therapies, bringing him to all his appointments, communicating with the therapists, and offering to bring supplies. Mother also handled all the medical appointments because Father deferred to her regarding H.'s medical needs. During times when speech or occupational therapy was scheduled for Father's custodial day, Father advised her by e-mail that he was not going to take him, stating that H. did not need it.

H. had received speech and occupational therapies from Three Little Birds once a week since 2014. In October 2021, Three Little Birds stopped taking commercial insurance. Father then wrote to Three Little Birds, without any communication with Mother, asking to have H. removed from their roster because he did not want to pay for it. Between October 2021 and the modification hearing, H. continued therapy, but Mother had been paying out-of-pocket for their services. She asked Father to contribute to the payment of these services, but he refused.

Mother also testified to numerous occasions when Father had insulted her. On a check that was deposited into the parties' joint checking account, "J is C" was written in Father's handwriting. Mother interpreted the writing to mean "Jen is cunt." At the time

[3] The Legacy School is an educational program for students from first through eighth grade with language-based learning disabilities. *About Us*, Legacy School, https://legacyschoolmd.org/about-us/ (last visited Dec. 4, 2024).

she received this check, the nature of the party's relationship was "[c]onstant insults" and "[i]ncendiary comments no matter what the communication."

In another instance, there was a note in H.'s lunchbox labeled "BFC." Mother's interpretation of this writing was "[b]ig fucking cunt." Mother stated that she believed "C" stands for cunt. She did not believe Father's assertion that it referred to the initial for their oldest child's name because she had never heard Father refer to their oldest child as big C, and she did not believe Father called him big C. Mother was upset when she saw the note, and H. had a reaction to this because she and H. were "very close," and "[h]e reacts when his mother gets upset."

On another occasion, after an end-of-school-year event for their oldest child, Father ran up to Mother's car screaming and yelling. H. was upset and crying from witnessing this.

Mother testified that she was not able to effectively communicate with Father. She stated that he does not respond, asks no questions, or insults her. "[O]n more than one occasion, [she had] received messages in [Our Family] Wizard attacking [her] personal appearance." Every communication was unproductive, and Father continuously created roadblocks to H.'s treatment, which made things much harder. There was a Temporary Order issued in May 2023 for the parties to communicate through Our Family Wizard for medication-related issues. Prior to that, a temporary consent order from September 2020 provided that all communication was to go through the Our Family Wizard. Father, however, sent messages that he was not going to renew his subscription.

Mother used Our Family Wizard to communicate with Father because it was "ordered as part of a Temporary Order" and she found it "to be an incredibly organized and effective tool." She "also was hoping that channeling all communication to Family Wizard would mitigate the provocative and inflammatory and abusive messages" that she received from Father.

B.

Father's Testimony

Father testified that H. is "an awesome little kid. He has a great sense of humor. He loves, he hugs. He loves to do Taekwondo . . . he jokes around." Father, H., and the parties' other son always engaged in "good light hearted joking." The parties' other son lived with Father 100% of the time.

Father testified that he was involved in the decision to enroll H. at Legacy. Before the divorce, both parents searched for schools, visited them, and talked with the administrators together. Although Mother may have sent the e-mails or communications, "it was always a joint thing." At Legacy, H. was taking reading, math, social studies, and speech therapy. Father communicated with H.'s teachers "[a]s necessary," and he would "e-mail them every now and then" if there was something wrong with his homework.

Father said that H. was doing "great in school," and he had adjusted well to the divorce. Since starting at Legacy, H. was more confident, more social, and doing well academically.

Before the parties' separation, Father attended appointments with H.'s psychiatrist. After the divorce, Father relied on Mother for information from the psychiatrist.

Although Mother had received documents and notes with acronyms that she perceived as insults, Father denied writing them, and he did not know what the letters meant. Father stated that he had referred to his oldest son as "Big C, heavy C, anything C" "forever." Father admitted to sarcastically throwing insults at the end of communications with Mother, such as "mother of the year" or "unfit mother," given "everything that's going on."

C.

David Nolletti's Testimony

Mr. Nolletti was married to Mother at the time of the hearing. He testified that he and H. had "a very close relationship" and enjoyed spending time together, playing Monopoly, watching TV, and going to Taekwondo.[4] He described his relationship with H. as normal and caring.

Since H. started attending Legacy, he had friends and a good social network. H. was making progress academically and improving in reading, math, and "[h]is understanding of certain events." H. was more inquisitive, with a genuine interest in learning.

Mr. Nolletti testified about several confrontations with Father. On April 16, 2021, before the parties' divorce, Father called Mother a "whore" while H. was present. On

[4] Mr. Nolletti volunteered as a Taekwondo instructor.

February 15, 2021, Father called Mr. Nolletti a "fuckin' Jew and a Kike." Father also yelled to Mother that she would never see their other son again. Mother "was obviously very upset and sobbing and got in the truck and drove up the driveway and left." H. was in the garage and witnessed this altercation, and he was "visibly upset."

Another time, there was a note in a Thermos when Mother received it back from Father. When she saw the note, Mother "gasped and started crying." H. became agitated and anxious. He approached Mother, put his arms around her, and cried. H. took 15-20 minutes to recover his composure from the incident.

Mr. Nolletti testified that he filed a lawsuit against Father for trespass and harassment. The suit was related to multiple times that Father had driven across his and Mother's lawn and thrown trash on their front porch. Some of the events leading to the lawsuit occurred before the parties' divorce.

D.

Julianna Shleifer's Testimony

Julianna Shleifer, a speech pathologist and co-owner of Three Little Birds, provided speech therapy and occupational therapy services to H. from October 2021 to December 2022. Prior to April 2021, H. received treatment through Trellis. Trellis was providing speech and occupational therapy programmatically through their outpatient program. In October 2021, Trellis decided not to provide these services. Ms. Shleifer then left Trellis and formed Three Little Birds. Three Little Birds had "somewhat of a partnership with Trellis," and "some of the clients that were receiving therapies . . . through Trellis came on

as Three Little Birds clients." H.'s speech and occupational therapies carried over from Trellis to Three Little Birds at that time.

Ms. Shleifer reached out to parents whose children transferred from Trellis to inform them of the transition. She received "questions from [Father] about the insurance, whether we accepted insurance, what the cost would be." Ms. Shleifer provided Father with information and costs, but she told him that Three Little Birds was not an in-network provider. Father advised that "it was more expensive," so she should not put H. on the schedule. Mother responded to Ms. Shleifer "that she would like him to continue with Three Little Birds." Ms. Shleifer sent an e-mail to both parents stating that, because of the conflicting information, Three Little Birds would need consent forms from one parent to continue with services. They received those forms from Mother. Father did not sign a consent form. Instead, he sent an e-mail stating that, if Three Little Birds were to continue with services with H., Mother would be responsible for payment. Each speech and occupational therapy session was $120 per hour, and they were all billed to, and paid by, Mother.

E.

Lindsay Dyer's Testimony

Lindsay Dyer was an occupational therapist at Three Little Birds. Ms. Dyer had treated H. once a week since August 2022. The last ten minutes of each occupational therapy session involved parental education. Mother was present for these meetings, but

Father was not. Mother brought H. to sessions, and Ms. Dyer did not correspond at all with Father.

F.

Dr. Stewart Varon's Testimony

Dr. Varon, a psychiatrist, had been treating H. since 2016. He described H. as "very sensitive, caring, compassionate," compliant, and eager to please. Despite H.'s autism diagnosis, he was able to understand social cues.

Both parents met with Dr. Varon prior to the divorce, but between the time of the parties' divorce and the modification hearing, Dr. Varon saw only Mother. Dr. Varon suggested after the divorce that there should no longer be collective meetings with both parents "given the acrimony." Mother had advised that H. had behavioral problems after a "visit with dad and brother when there's a lot of teasing."

For example, on December 8, 2021, when H. returned to Mother after spending time with Father, H. had increased OCD and anxiety, and he "need[ed] assurance." Dr. Varon explained that, even in the best circumstances, there were concerns about "transition and the stress that that causes for a child." Transitions are hard for neuro-typical children, and they could be harder on "atypical or the neuro-atypical" children "because you are interrupting their routine and their structure."

Although Mother had made comments to Dr. Varon about H.'s exposure to Father's "extreme volatility," H. had never "complained about either parent or either parent's conduct." Dr. Varon stated, however, that "[a] lot of times children are . . . very loyal to

both parents," and children generally do not talk negatively about their parents. The only source of information that Dr. Varon had regarding what happened in Father's home was Mother because H. had not brought up any issues, and Father did not attend sessions.

G.

Closing Arguments

At the conclusion of all the evidence, counsel for the parties made closing arguments. Mother argued that circumstances had changed since the parties' divorce, leading her to seek modification of custody and an adjustment of child support. The change in circumstances was due to Father's behaviors, including: communications littered with offensive language and insults; unilaterally attempting to terminate H.'s speech and occupational therapy services; and not participating in H.'s care and attempting to undermine the efficacy of services received. Mother argued that the "acrimony between the parties [was] not in the Minor Child's best interests," citing Mr. Nolletti's testimony about the various incidents where H. had become upset due to Father's actions and insults towards Mother.

Mother argued that the testimony and evidence clearly showed there had been a material change in circumstances since the parties' divorce because "Father's behaviors were not foreseeable at the time of the divorce." Even if "Father had engaged in mild misbehaviors prior to the parties' divorce, Mother was entitled to a reasonable expectation that, after the divorce concluded, Father's behaviors would subside." Mother argued that "there must be a modification granting Mother sole legal custody" because Father refused

to communicate through Our Family Wizard "despite having been ordered to do so," Father was not participating with H.'s therapies, and he was unable to communicate without harassing Mother.

With respect to financial issues, Mother argued that Father should be required to reimburse her for the out-of-pocket cost of H.'s speech and occupational therapy from Three Little Birds. Additionally, she argued that child support needed to be recalculated to account for the increase in Father's income. Finally, she argued that "attorneys' fees were necessary, at minimum, to seek reimbursement from Father for the Minor Child's speech and occupational therapies."

Father argued that Mother failed to show that there had been any material change in circumstance that affected the well-being of H. Accordingly, he stated that "the request to modify the terms of the prior order must be denied." Father argued that Mother's evidence of "what she refers to as [Father's] 'behaviors'" was speculative, self-serving, and unbelievable.

Regarding Mother's allegation that Father sought to unilaterally terminate H.'s speech and occupational therapies, he argued that he believed that the services H. received at Three Little Birds were unnecessary because they were duplicative of the speech services he received at Legacy. Father also believed that H. could "receive the same benefits from extracurricular activities, like taekwondo or swimming, that he receive[d] from occupational therapy." Father argued that he did not violate the MSA by refusing to pay

for the speech and occupational therapies from Three Little Birds because the providers were "not the same providers who were treating [H.] at the time of the divorce."

Father argued that Mother created a "false narrative" about him and the parties' abilities to make decisions about H. In reality, "the parties [had] been able to reach shared decisions for [H.]'s well-being and the result [was] a drastic improvement in most areas of [H.]'s life." Father argued that there had been no material change in circumstances since the parties' divorce that affected the well-being of H., and it would not be in H.'s best interest to modify the current custody arrangement.

Father also argued that Mother should not be awarded an increase in child support. He stated that the 2022 Tax return that Mother submitted into evidence, showing his taxable income was $318,514.00, did not accurately reflect his income because he was self-employed, and his income fluctuates.

The Best Interest Attorney argued that the testimony of each of the parties was self-serving, and felt as if the parties were "litigating a divorce and the reasons for it – a matter that was resolved *by agreement* in 2021." He stated that, even if the inappropriate comments and notes that Father allegedly wrote to Mother were true, by Mother's own testimony, there was no impact on H. because H. typically was in school when she retrieved his bag, meaning that H. would not see the anxiety caused by Father. The Best Interest Attorney further noted that the evidence showed that H. had adjusted well to the divorce, while simultaneously improving academically and socially, so the "existing custody agreement should not be disrupted."

H.

Trial Court's Memorandum Opinion

On March 14, 2024, the court issued a Memorandum Opinion. After discussing the evidence presented, the court found that there had not been a material change in circumstances that affected H.'s welfare. It acknowledged the clear acrimony between the parties, stating that Father's behavior toward Mother was juvenile and served no purpose other than to generate a response from Mother. The court noted, however, that "this behavior also occurred when the parties were married so it is nothing new and was in existence when they agreed to the current custody agreement."

The court found that the "circumstances as they exist now are primarily changes in circumstances that effect the relationship between [Mother and Father] as coparents." Although Father regularly antagonized Mother, her reactions to Father's behavior were rarely in the presence of H., and there was "no independent evidence to corroborate" H.'s reaction to any reaction by Mother. Although the court acknowledged that exposure to the parties' acrimonious relationship was not in H.'s best interest, changing the custody schedule was not the solution. Rather it was on the parents to act in a way that served H.'s best interest. The court stated that, prior to the divorce, the parents used Our Family Wizard, and they should resume doing that. The court concluded that there had "not been a material change in circumstances which affects the welfare of the minor child." The court stated that, because it did not find a material change in circumstances, it did not need to conduct a best-interest analysis.

The court next considered Mother's request for an adjustment in child support. With respect to the parties' income, the court noted that, at the time of the divorce, Father was earning approximately $18,570 per month, or approximately $222,840 per year. In 2021, Father's total income was $203,145 and his total income for 2022 was $339,010. Because Father was self-employed, and his income fluctuated, the court averaged his income for 2021 and 2022 and attributed to him an annual income of $271,077, or $22,590 per month. The court gave Father $850 in credit for his health insurance premium. It stated that, based on this income and credit alone, the Child Support Guidelines[5] provided for a child support obligation of $2,006.[6]

Turning next to Mother, the court found that, although she did not work, she had worked in the past, and she "provided no meritorious reason as to why she could not work." Accordingly, the court stated that it would impute a monthly income of $2,580 to Mother, explaining that this monthly income was based on Maryland's minimum wage of $15 an hour on a full-time schedule.

The court then calculated the guidelines with both parties' income, and it determined that Father's monthly child support obligation would be $1,610, which was "an 11% increase from his previous obligation of $1,450." It stated that, based on Father's income, the Child Support Guidelines recommended the monthly child support obligation to be

[5] The Child Support Guidelines are found at Md. Code Ann., Fam. Law ("FL") § 12-204 (2024 Supp.).

[6] The prior order included a downward deviation from the guidelines, but no reason was given for the deviation.

$2,006, but a downward deviation to $1,610 was fair given that the court would be ordering Father to pay for services from Three Little Birds that were not part of the ordered agreement.

The court then addressed Mother's request for reimbursement of the out-of-pocket speech and occupational therapy expenses she incurred from Three Little Birds after it stopped accepting Father's insurance. The court found that, pursuant to the MSA, Father had to provide written consent for Mother to utilize the services of a provider not covered by insurance, and Father did not consent to use the services of Three Little Birds after it stopped accepting insurance. Accordingly, the court found that Father had no obligation to reimburse Mother for the out-of-pocket expenses. The court ordered, however, that going forward, the services would continue, and unless there were in-network providers who could perform the same services, the parties would divide the costs as set forth in the MSA. It noted that, "[f]or any new out-of-network providers or additional services, the Marital Settlement Agreement regarding Defendant's consent will apply."

With respect to the parties' requests for attorneys' fees, the court noted that, in addressing this request, the court must consider "both the financial resources and financial needs of both parties and whether there was substantial justification for prosecuting or defending the proceeding." The court stated that it

> agrees that the parties should have returned to mediation, per the Marital Settlement Agreement, however, the failure to do so prior to filing the petition cannot be said to be bad faith. The Court finds that Plaintiff's Complaint for Modification of Custody and Child Support and Defendant's defense of same was done with substantial justification based on the evident inability of the parties to communicate effectively. The Court finds

substantial justification for both parties. Therefore, both parties' requests for attorneys' fees are denied.

On the same day, the court issued an order addressing Mother's Complaint for Modification and Child Support. The order denied in part and granted in part her Complaint for Modification of Custody and Child Support. The court ordered that the parties would continue to share physical custody and joint legal custody of H. Additionally, the parties were ordered to communicate exclusively through the Our Family Wizard platform. The court further ordered that neither party could make disparaging remarks about the other to any third party or in front of H. Both parties were also prohibited from discussing the case in front of H.

The court determined that it would be in H.'s best interest for both parents to be equally involved in his care. It ordered each parent to regularly communicate with H.'s educational and health care providers. Additionally, the court ordered that, to the extent possible, one service be scheduled during Father's access days and another during Mother's access days.

With respect to child support, the court ordered that Father was required to pay Mother, effective April 5, 2024, $1,610.10 per month. The court denied Mother's request for reimbursement of extraordinary medical expenses, but it ordered that, starting April 1, 2024, the parties were ordered to share the costs of current services from Three Little Birds, as outlined in the MSA. Finally, the court denied both parties' requests for attorneys' fees.

IV.

Motion to Alter or Amend

Mother subsequently filed a Motion to Alter or Amend the March 14, 2024 Order and/or For a New Trial regarding the decisions on physical and legal custody, child support, and reimbursement of therapy costs. Mother alleged that the parties' "inability to communicate" has led to "issues, including delays in treatment/medication decisions" for H. She asserted that there was no evidence regarding the parties' pre-divorce conduct, but "[e]ven assuming there was such conduct before the divorce—which would require speculation by the Court—there [was] absolutely no question that, if so, [Father's] behaviors have massively increased in both caliber and frequency since that time, warranting a modification of custody." Mother alleged that she had "certainly demonstrated a material change in circumstances to warrant this Court undertaking a best interest of the child analysis." She also alleged that Father had "demonstrated unwillingness and lack of participation with [H.'s] care," exemplified by H. only attending speech and occupational therapies on Mother's access days.

Mother also argued that there was no basis for the court to impute income to her, noting that there was no testimony regarding her ability to work. She argued that

> it was [her] testimony that managing [H.'s] care is a full-time job in and of itself. Should [the court] impute income to Wife, it would need to be offset by the costs of daycare, which would net little, if any, income to Wife, especially given the need for specialized daycare to address [H.'s] specific needs, if such specialized daycare is even available.

Finally, Mother argued that the court incorrectly found that Father was not required to repay the out-of-pocket expenses according to the MSA.

On April 30, 2024, the court denied Mother's Motion to Alter or Amend. This appeal followed.

DISCUSSION

I. & II.

Custody Modification

Mother contends that the circuit court erred in denying her request for modification of custody. Specifically, she contends that the court erred in failing to consider the best interest of H., and it abused its discretion in its ultimate conclusion regarding modification of custody.

Father contends that the court did not err or abuse its discretion in denying the motion to modify custody because Mother failed to show a material change in circumstances that affected H.'s wellbeing. He argues that, once the court made this finding, it was not obligated to further consider the best interest of the child.

In reviewing a request for a modification of custody, a court typically follows a "chronological two-step process." *Wagner v. Wagner*, 109 Md. App. 1, 28, *cert. denied*, 343 Md. 334 (1996). The court initially considers whether there has been a material change in circumstances. *Id.* A change is material if it affects the "welfare of a child." *McCready v. McCready*, 323 Md. 476, 481 (1991). *Accord Domingues v. Johnson*, 323 Md. 486, 501-02 (1991) (a parent's relocation may warrant a custody modification, as it could disrupt the child's environment and potentially be against their best interests). In determining whether

a material change has occurred, the court considers the circumstances that were "known to the [] court when it rendered the prior order." *Wagner*, 109 Md. App. at 28.

If a party introduces evidence of material changes, the court considers the child's best interest when "[d]eciding whether those changes are sufficient to require a change in custody." *McCready*, 323 Md. at 482. While the two steps are sometimes used to help inform each other, they are distinct, and the "court must make a threshold determination whether a material change in circumstances has occurred" before engaging in the best interest analysis. *Velasquez v. Fuentes*, 262 Md. App. 215, 249 (2024). If the evidence of a change in circumstances is "*not strong enough, i.e.*, either no change or the change itself does not relate to the child's welfare," the court need not engage in the best interest analysis. *Wagner*, 109 Md. App. at 29; *Accord Velasquez*, 262 Md. App. at 249 (the best interests analysis does not apply unless the threshold issue, a material change of circumstances, is first found); *Wagner*, 109 Md. App. at 28 ("[U]nless a material change of circumstances is found to exist, the court's inquiry ceases.").

Here, the court determined that the evidence Mother presented did not constitute a material change in circumstances because there was no showing that any change negatively affected H.'s welfare, noting that H. was "doing well academically and socially, and he continues to progress." Because the court did not find that there had been a material change in circumstances, it stated that it did not need to engage in a best interest of the child analysis.

In reviewing the circuit court's determination that there was no material change in circumstances, we give that determination great deference. *Wagner*, 109 Md. App. at 33. We conclude that the evidence supports the court's finding that, even if a change had occurred, it did not impact H.'s welfare.

Although the parties had an acrimonious relationship, they had been able to make joint decisions regarding H.'s health and well-being in consultation with H.'s healthcare and education professionals. Moreover, the record supported the court's finding that Father's inappropriate behavior towards Mother could not be said to be a change in circumstances because there was evidence of similar behavior when the parties agreed to the custody arrangement. Finally, given that H. enjoyed spending time with each of the parties, and he was "doing well academically and socially," we perceive no error or abuse of discretion by the circuit court in denying Mother's request to modify custody.[7]

III.

Imputed Income

Mother contends that, in assessing her request for child support, the court improperly imputed income to her without performing the necessary voluntary

[7] Mother argues in her brief that, although the court denied her request to modify custody, it did make minor adjustments to custody, such as requiring the parties to communicate through Our Family Wizard, mandating that H. continue attending Three Little Birds, with the parties to share costs, and specifying that one of H.'s services be scheduled on Mother's custody days and the other on Father's custody days. Father contends that these were not changes to legal or physical custody because the parties had already agreed to these terms, and the court merely memorialized that agreement. At oral argument, counsel for Mother stated that she was not asking for these minor adjustments to be vacated.

impoverishment and potential income analysis. She asks this court to vacate the ruling imputing income to her and remand for the court to consider "the totality of the circumstances before deciding whether the Mother has voluntarily impoverished herself by working as a full-time homemaker and mother for the last 20 years."

Father contends that the court did not err in imputing full-time minimum wage income to Mother. He asserts that this ruling was supported by Mother's testimony that she had previously worked, but she was not employed at the time of the trial, had not sought employment, had no plans to look for work, and was not contributing to her own expenses.

It is well established in Maryland law that "both parents have a legal as well as a moral obligation to [financially] support and care for their children." *Petrini v. Petrini*, 336 Md. 453, 459 (1994). When determining child support pursuant to the Child Support Guidelines, the court must determine the income of each parent. Md. Code Ann., Fam. Law ("FL") § 12-204 (2024 Supp.). The court calculates a parent's income based on either "[a]ctual income" or "[p]otential income," depending on the parent's employment circumstances. FL § 12-201(i), (m).

Actual income is defined as income from any source, including salaries, wages, commissions, bonuses, and other forms of compensation. FL § 12–201(b)(1), (3). A court can impute income and determine that a parent is "voluntarily impoverished" when the parent makes "the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources." *Goldberger v. Goldberger*, 96 Md. App. 313, 327, *cert. denied*, 332 Md. 453 (1993). To assess voluntary

impoverishment, the court "ask[s] whether [the parent's] current impoverishment is intentional, that is, by his own choice, of his own free will." *Stull v. Stull,* 144 Md. App. 237, 248 (2002). The court may not, however, impute potential income to a parent who is incarcerated, unable to work because of a physical or mental disability, or "caring for a child under the age of 2 years for whom the parents are jointly and severally responsible." FL § 12-204(b)(3).

In assessing whether a parent is voluntarily impoverished, the court should consider a variety of factors to determine whether the parent has "freely been made poor or deprived of resources." *Goldberger*, 96 Md. App. at 327. These factors include:

1. The parent's current physical condition;
2. The parent's level of education;
3. The timing of any change in employment or financial circumstances relative to the divorce proceedings;
4. The relationship between the parties prior to the divorce;
5. The parent's efforts to find and retain employment;
6. The parent's efforts to secure retraining if necessary;
7. Whether the parent has ever withheld support;
8. The parent's past work history;
9. The status of the job market in the area where the parties live; and
10. Any other relevant considerations presented by either party.

Lorincz v. Lorincz, 183 Md. App. 312, 331 (2008).

If the court finds that a parent is voluntarily impoverished, "child support may be calculated based on a determination of potential income." FL § 12-204(b). In determining the amount of potential income to be imputed due to employment potential, the court shall consider the following factors:

> (1) the parent's employment potential and probable earnings level based on, but not limited to:

(i) the parent's:
1. age;
2. physical and behavioral condition;
3. educational attainment;
4. special training or skills;
5. literacy;
6. residence;
7. occupational qualifications and job skills;
8. employment and earnings history;
9. record of efforts to obtain and retain employment; and
10. criminal record and other employment barriers; and

(ii) employment opportunities in the community where the parent lives, including:
1. the status of the job market;
2. prevailing earnings levels; and
3. the availability of employers willing to hire the parent;

(2) the parent's assets;
(3) the parent's actual income from all sources; and
(4) any other factor bearing on the parent's ability to obtain funds for child support.

FL § 12-201(m).[8]

We address first Mother's contention that the record does not reflect that the court considered the requisite factors to find voluntary impoverishment or potential income. Initially, we note that, when a court is required to consider a list of factors, it is not required to "articulate on the record its consideration of each and every factor." *Dunlap v. Fiorenza*, 128 Md. App. 357, 364, *cert. denied*, 357 Md. 191 (1999). *Accord Long v. Long*, 141 Md. App. 341, 351 (2001) (the "mere lack of an explicit discussion of each of the factors on the record by the trial court does not necessarily mean that the trial court erred"); *Lee v. Andochick*, 182 Md. App. 268, 287 (that "the court did not catalog each factor and all the

[8] These factors are substantially similar to the factors courts used prior to the statutory enactment in 2022. *See Sieglein v. Schmidt*, 224 Md. App. 222, 248 (2015), *aff'd*, 447 Md. 647 (2016).

evidence which related to each factor does not require reversal"), *cert. denied*, 406 Md. 745 (2008). A judge is presumed to know the law and to have performed his or her duties properly. *Lapides v. Lapides*, 50 Md. App. 248, 252 (1981).

Moreover, although the court did not explicitly discuss each factor, there was evidence in the record to support the court's findings. With respect to the issue of voluntary impoverishment, Mother testified that she holds a master's degree in finance and last worked in 2004 as a healthcare consultant with KPMG. Before the divorce, she discussed returning to work with her previous employer, but she ultimately decided that it was "not realistic" to re-enter her career at that time, due to H.'s special needs. As the trial court stated, however, although Mother had worked in the past, she "provided no meritorious reason as to why she could not work" at the time of the hearing, when H. was in a new school and doing well. Based on the record here, we cannot conclude that the court's finding of voluntary impoverishment was clearly erroneous. *Sieglein v. Schmidt*, 224 Md. App. 222, 249 (2015) (finding of voluntary impoverishment of a parent for purposes of child support is reviewed under the clearly erroneous standard), *aff'd*, 447 Md. 647 (2016).

With respect to the amount of potential income imputed, Mother again argues that the court erred in failing to consider the requisite factors. As we indicated previously, the failure to explicitly discuss the factors on the record is not sufficient to reverse a court's finding in this regard.

Moreover, this Court has explained:

> "[A]ny determination of 'potential income' must necessarily involve a degree of speculation." *Reuter* [*v. Reuter*, 102 Md. App. 212, 223 (1994)] A

> parent's potential income "is not the type of fact which is capable of being 'verified,' through documentation or otherwise." *Id.* at 224, 649 A.2d 24. But, so long as the factual findings are not clearly erroneous, "the amount calculated is 'realistic', and the figure is not so unreasonably high or low as to amount to abuse of discretion, the court's ruling may not be disturbed."

Durkee v. Durkee, 144 Md. App. 161, 187, *cert. denied*, 370 Md. 269 (2002).

Mother does not argue that the court's ruling in imputing to her an income of $2,580.00 a month, Maryland's minimum wage for full-time employment, is unreasonably high or low. Based on the record here, we cannot conclude that the court erred or abused its discretion in imputing income to Mother in determining an award of child support.

IV.

Mother's Request for Reimbursement

Mother contends that the circuit court erred in denying her request for reimbursement of $18,710 for out-of-pocket medical expenses related to speech and occupational therapy services to H. provided by Three Little Birds from October 2021 through December 2023, the date of the modification hearing. She asserts that the court based its decision on its "clearly erroneous" factual finding that she needed Father's written consent to use a provider not covered by insurance.

Father disagrees. He contends that the court properly denied Mother's "request for reimbursement for providers that [he] did not consent to."

This issue is governed by the agreement of the parties. The MSA provides:

> 8.1 The parties shall divide by the pro rata share of their combined incomes as established by the Maryland Child Support Guidelines any necessary and reasonable medical, dental, orthodontia, eyecare and/or hospitalization expenses incurred on behalf of their Children and which are

> not covered or reimbursed by insurance. This obligation shall include any necessary counselling or mental health therapy expenses for either Child which are mutually agreed upon by the parties, with neither party to unreasonably withhold his or her consent. **Unless it is not practicable to do so, the health care provider of services to each Child shall be a recognized and approved participant under Husband's health insurance plan. Unless Husband has provided his written consent for Wife to utilize services of a health care provider for each Child which is not a recognized and approved participant under Husband's health insurance plan, and except in the event of an emergency, Husband shall have no obligation pursuant to this Paragraph.** The parties acknowledge that many of [H.]'s established medical and educational professionals (Dr. Culotta, Dr. Aron, Lisa Frank, etc.) do not accept health insurance and nothing in this provision prevents either party from continuing to use existing professionals for [H.]'s medical care and for either party to seek reimbursement from the other for the cost of using said professional by the pro rata share of their combined incomes as established by the Maryland Child Support Guidelines.

(Emphasis added).

The circuit court construed that agreement to provide that, for Father to be obligated to pay for services of a provider not covered by his insurance, Father had to provide written consent. Because Father did not consent to services from Three Little Birds, and he specifically said that he did not consent to those services, the court concluded that he had no obligation to reimburse Mother for those incurred expenses.

"The interpretation of a contract . . . is a question of law, subject to *de novo* review by an appellate court." *4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, 246 Md. App. 1, 19 (quoting *Erie Ins. Exch. v. Estate of Reeside*, 200 Md. App. 453, 461 (2011)), *cert. denied*, 469 Md. 655 (2020). We interpret contracts—including marital settlement agreements, *see Petitto v. Petitto*, 147 Md. App. 280, 298 (2002)—"under 'the objective theory of contract interpretation.'" *Park Heights Ave.*, 246 Md. App. at 19 (quoting *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019)). Our "primary goal . .

. is to ascertain the intent of the parties in entering the agreement," *id.*, by "consider[ing] the contract from the perspective of a reasonable person standing in the parties' shoes at the time of the contract's formation," *Ocean Petroleum, Co., Inc. v. Yanek*, 416 Md. 74, 86 (2010). "[U]nless a contract's language is ambiguous, we give effect to th[e] language as written," *id.*, recognizing that our "interpretation should not permit an absurd or unreasonable result," *Middlebrook Tech, LLC v. Moore*, 157 Md. App. 40, 66 (2004).

Here, the plain language of the MSA establishes that, if Father's insurance does not cover a healthcare provider, his consent is required for him to assume any payment obligation. At the time the MSA was signed, the provider accepted Father's insurance, making it an established provider for H. When Three Little Birds stopped accepting insurance, however, Father's consent was required for him to bear any financial responsibility. Since Father did not provide his consent, the court correctly found that Father is not obligated to pay for these services. Accordingly, the court properly denied Mother's request for reimbursement of the $18,710.10 in out-of-pocket expenses that she paid for speech and occupational therapy services to H. by Three Little Birds from October 2021 through the December 2023 Modification Hearing.

V.

Attorneys' Fees

Mother contends that the circuit court erred in denying her claim for attorneys' fees, asserting that it failed to consider the necessary statutory factors. She asserts that an analysis of whether to award attorney's fees under the Family Law Article "is mandatory,

specific, and must be fully completed in any case in order for a decision on granting (or denying) an attorneys' fee award to stand on appeal." Mother argues that the court failed to conduct the required analysis here because the court evaluated only one of the three requisite factors, whether the parties had substantial justification for their actions in the proceeding. Mother claims that the court improperly failed to consider the "parties' respective financial statuses or needs" and the reasonableness of the fees.

Father contends that the court did not err in denying Mother's request for attorneys' fees. Although he agrees that the court analyzed only the issue of substantial justification in bringing or defending a proceeding, he argues that Mother "cannot fault the [] court for failing to analyze" the other requisite factors "when she did not present any evidence upon which those factors could have been analyzed."

"Although the general rule is that 'each party is responsible for its own legal fees,' a court may order one party to pay the other party's attorney's fees pursuant to statute or by an express agreement." *Meyr v. Meyr*, 195 Md. App. 524, 552 (2010) (quoting *Henriquez v. Henriquez*, 413 Md. 287, 294 (2010)). FL § 12-103(a) provides that a circuit court "may award to either party the costs and counsel fees that are just and proper under all the circumstances" in a case involving the modification of custody, support, or visitation of a child. In deciding an award of costs and counsel fees, the court shall consider: (1) the financial status of each party; (2) the needs of each party; and (3) whether there was

substantial justification for bringing, maintaining, or defending the proceeding. FL § 12-103(b).[9]

If the court finds, pursuant to § 12-103(b), that both parties had substantial justification for bringing or defending their respective positions in the proceeding, it must then value the legal services afforded to both parties, and after determining the reasonableness of the legal fees, it must assess the parties' respective financial status and needs. *Davis v. Petito*, 425 Md. 191, 204 (2012); *see* FL § 12-103(b). "So long as the parties were substantially justified in bringing, maintaining, or defending the proceeding, the [] court has significant discretion in applying the factors." *Ruiz v. Kinoshita*, 239 Md. App. 395, 438 (2018). "Its failure to consider those factors, however, is legal error." *Id*. The court does not need to "recite any 'magical' words so long as its opinion, however phrased, does that which the statute requires." *Horsley v. Radisi*, 132 Md. App. 1, 31 (2000) (quoting *Beck v. Beck*, 112 Md. App. 197, 212 (1996)).

Here, in addressing Mother's request for attorneys' fees the court stated:

> In determining whether to award counsel fees, the Court considers both the financial resources and financial needs of both parties and whether there was substantial justification for prosecuting or defending the proceeding. . . . The Court agrees that the parties should have returned to mediation, per the Marital Settlement Agreement, however, the failure to do so prior to filing a petition cannot be said to be bad faith. The Court finds that Plaintiff's Complaint for Modification of Custody and Child Support and Defendant's defense of same was done with substantial justification based on the evident inability of the parties to communicate effectively. The Court finds

[9] If the court decides to award attorney's fees, it also must analyze the reasonableness of the requested fees. *Davis v. Petito*, 425 Md. 191, 204 (2012); *see* F.L. § 12-103(b). Here, the parties stipulated to the reasonableness of the legal fees submitted. The parties did not stipulate to the Best Interest Attorney's fees.

> substantial finds justification for both parties. Therefore, both parties' requests for attorneys' fees are denied.

Clearly, as the parties acknowledged, the court addressed the substantial justification factor. Although the court stated that it needed to consider the financial resources and needs of the parties,[10] there was no discussion about those factors.

Father contends that there was no error in performing an analysis of the financial status and needs of the parties because there was no evidence presented to permit such a finding. He asserts:

> [t]here was no evidence presented that Wife was in need of an award of fees. There was no evidence presented that Husband had the ability to pay any portion of Wife's fees. The information before the trial court was Husband's income; Wife's lack of income due to her choice not to work; Husband's payment of the tuition, education, and medical expenses of [H.]; Wife's payment of certain expenses of [H.]; and Wife's lack of financial responsibility for any of her own expenses. There were no bank statements, no credit card statements, and no testimony regarding the information that would be contained in such documents, that would allow the trial court to assess the needs and financial resources of the parties, nor either party's ability to contribute to the attorney's fees of the other.

Mother did not rebut Father's assertion in this regard in her briefs. At oral argument, Mother stated, without elaboration, that there was such evidence in the financial statements submitted. We note, however, that Mother's closing argument regarding attorneys' fees in

[10] The court cited to FL § 11-110(c), which addresses attorney's fees in an alimony case and requires consideration of financial resources and needs, instead of FL § 12-103, which provides for attorney's fees for modification of custody and refers to financial status and needs.

the circuit court focused solely on the factor addressed by the circuit court; i.e., substantial justification.[11]

We agree with Father that there was not sufficient evidence or argument for the court to make a finding regarding the financial status and needs of the parties. If that was the stated basis for the court's ruling denying the motion for attorneys' fees, we would uphold it. The court, however, appeared to deny the request for attorneys' fees based solely on its finding that both parties had "substantial justification" for the proceeding. Because there was not sufficient evidence, argument, or analysis on the financial status and needs of the parties, we shall vacate the court's ruling denying Mother's request for attorneys' fees. On remand, the court may, in its discretion, allow the parties to present additional evidence on this issue. *Guillaume v. Guillaume*, 243 Md. App. 6, 28 (2019).

VI.

Motion to Alter or Amend

Mother's final contention is that the court "erred and abused its discretion when it denied [her] Motion to Alter or Amend and/or for a New Trial" based on "all of her arguments set forth [previously]," with respect to the court's decisions on "physical and legal custody, child support, and reimbursement of therapy costs." Because we have denied these previous arguments, we conclude that the circuit court did not abuse its

[11] Argument by counsel for Mother stated only: "There is no question that Mother's attorneys' fees were necessary, at minimum, to seek reimbursement from Father for the Minor Child's speech and occupational therapies. Accordingly, Mother seeks her reasonable and necessary attorneys' fees in the amount of $55,758.25, incurred through December 5, 2023."

discretion in denying Mother's motion to alter or amend. *See Miller v. Mathias*, 428 Md. 419, 438 (2012) (review of an appeal from the denial of a motion to alter or amend a judgment is for abuse of discretion)

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND VACATED AND REMANDED IN PART. COSTS TO BE PAID BY APPELLANT.